August 14, 1986

**DEPARTMENT OF STATE**

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: B[redacted] J[redacted] B[redacted] R[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, B[redacted] J[redacted] B[redacted] R[redacted], expatriated herself on August 28, 1980 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Argentina upon her own application. 1/

For the reasons set forth below, we affirm the Department's determination of Mrs. R[redacted] expatriation.

I

Mrs. R[redacted], n[redacted] B[redacted], was born at [redacted] on [redacted], and so became a United States citizen. She was reared and educated in Cleveland. In 1954 she married Dr. J[redacted] R[redacted] a citizen of Argentina. Two children were born in the United States. In 1959 Dr. R[redacted] was offered a teaching position in the medical school of the National University of Cordoba, and the family moved to Argentina. A third child was born in Argentina. From 1962 to 1964 Mrs. R[redacted] was employed by the Public Health Service of Cordoba as a registered nurse. She visited the United States from 1967 to 1968, and again briefly in 1973. According to appellant's submissions, her husband was discharged from his position at the medical school by the military authorities in 1978. She therefore applied for reinstatement with the Public Health Service in order to help the family. While her application was being processed, Mrs. R[redacted] states, she worked in private clinics from March 1979 to March 1981.

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), reads as follows:

Section 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

(1) obtaining naturalization in a foreign state upon his own application, . . .

When she was employed by the Public Health Service in the **1960's** she was, she has said, able to work as an alien, but by **1979** or **1980** Argentine citizenship was a prerequisite to employment in the provincial public service. She therefore applied for naturalization. On March **5, 1980** by judicial decree she was granted Argentine nationality, with effect from the date she made the prescribed oath of allegiance. On August 28, **1980** she appeared before an official in Cordoba and made the required oath. The presiding official noted on her certificate of naturalization that:

> I hereby certify that [redacted] R[redacted] took the oath of loyalty to the Republic, its Constitution, and its laws, and renounced obedience and allegiance to any other State, on August **28, 1980**, in the city of Cordoba. On that occasion she received naturalization papers. 2/

Mrs. R[redacted] states that she began working for the Public Health Service in June **1981**. She became ill in December **1983** and her doctor recommended she take a leave of absence. Her husband thought it would do her good to visit her family in the United States.

In July **1984** Mrs. R[redacted] visited the United States Embassy at Buenos Aires. As the Embassy later reported to the Department:

> **...**on 20 Jul **84**, Subject came to the Embassy and, presenting an Argentine passport, applied for a tourist visa to travel to the United States with her husband. Her last United States passport had been issued on **29** Dec 72. The Visa officer refused her visa application under Section 221(g) of the Act and referred her to the Consulate's Citizenship Section.

The Embassy's report continued:

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2/ Mrs. R[redacted] cited as the legal basis for the requirement that persons employed by the provincial Public Health Service be Argentine citizens, law no. **6402,** enacted by the Provincial Governor of Cordoba on May 22, **1980**. Since she obviously applied for naturalization before enactment of law no. 6402, one may conjecture that *Mrs.* R[redacted] became aware, by means not specified in the record, before enactment of the law that such a requirement would be imposed on those who wished to work in the public sector.

> At our invitation, Subject returned to the Embassy on 30 Jul 84 to discuss her case in more depth. The notes of the Vice Consul who spoke with her indicate that, 'on 30 Jul 84, Mrs. R. appeared at the Consular Section with her husband and her Argentine passport in order to apply for a tourist visa, although she had a U.S. passport issued by the Embassy on 29 Dec 72. She did not wish to apply for a new one. She was given forms OF-178, OF-178A /application for passport/ and the Questionnnaire /information for determining U.S. citizenship/ to complete. She insisted, however, on having a tourist visa issued to her and she informed the consular assistant that she was going to mail the forms to the Embassy (which she later did).' Embassy notes that, on her nonimmigrant visa application (Form OF-156), subject wrote "Naturalized Argentine" in response to question number 6 which asks one's nationality.

*Mrs.* R[redacted] denies that she insisted on having a non-immigrant visa in her Argentina passport and that she had said she did not want to apply for a United States passport. 3/ She makes the following comments about the Department's reference to the foregoing statement of the Embassy:

> Why then, would I request a passport/registration application if I didn't want to acquire a United States passport? Upon Miss Angelas' /presumably a foreign service local employee/ advice which was the following: "fill out the questionnaire, send it in and when you return to Argentina fill out the United States passport application at the Embassy, there's no hurry". Miss Valderama /presumably a foreign service local employee/ in turn, advised me that once being born a North American citizen you are always considered one. At that point I was told that it was the same at that time to travel with the Argentine passport. NOW, I realize I was miss-informed /sic/. I hesitated previously

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3/ Affidavit of October 23, 1985.

> to mention that during my interview with both Miss V[redacted] and Miss A[redacted], I had the impression that there was serious disagreement between them concerning my situation. I believe law is based on facts. How can (the) Department of State base their decision on the opinion of a consulate officer, whoever she may be, about an individual she does not know? I took the advice at the time of the person representing the United States.

The Embassy issued Mrs. R[redacted] a non-immigrant visa, and noted on her visa application: "Upon return to Arg. will look into matter of citizenship." On August 6, **1984** she completed the questionnaire referred to above titled "Information for Determining U.S. Citizenship." She also filled out but did not sign an application for a United States passport and a supplement to the application.

*Mrs.* R[redacted] presumably travelled to the United States sometime after August **1984.** The record does not indicate when she returned but she states that she retired from the Public Health Service in January **1985.**

Meanwhile, in compliance with section **358** of the Immigration and Nationality Act, **4/** a consular officer executed a certificate of loss of nationality-in Mrs. R[redacted]'s name on August 26,

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**4/** Section **358** of the Immigration and Nationality Act, **8** U.S.C. **1501,** reads as follows:

Sec. **358.** Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter **3** of this title, or under any provision of chapter IV of the Nationality Act of **1940,** as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the reportwas made shall be directed to forward a copy of the certificate to the person to whom it relates.

1.84. 5/ The officer certified that Mrs. R[redacted] acquired United States nationality at birth; that she obtained naturalization in Argentina upon her own application; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

On October 23, 1984 the Department requested that the consular officer who handled Mrs. R[redacted] case submit an opinion with respect to her intent to relinquish United States citizenship. On January 15, 1985 the consular officer submitted the following assessment of appellant's intent:

> Though subject's intent at the time of naturalization is difficult to assess, it would appear that she acted with the intention of relinquishing her citizenship as defined in 7 FAM 1218 and is therefore subject to the provisions of Section 349(a)(1) of the Act. Subject

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5/ In light of the notation on Mrs. R[redacted] visa application indicating that she would look into her citizenship case upon her return to Argentina, and her letter of August 16, 1984 to the Embassy in which she said that when she returned to Argentina she would take to the Embassy her three expired United States passports, it would appear that the consular officer acted precipitately in executing a certificate of loss of nationality. Although the record does not indicate that the Embassy agreed to take no further action in her case until she returned, the implication of the notation on the visa application is that the matter would be held in abeyance. But the pertinent question is whether Mrs. R[redacted] was in any way prejudiced by the Embassy's executing the certificate before she had the chance to discuss the matter further.

Mrs. R[redacted] does not contend that she has been prejudiced; indeed, she has not even taken note that the Embassy executed a certificate at the time that it did so. On balance, we do not see prejudice to her case. By the time the consular officer prepared the certificate, Mrs. R[redacted] had completed the citizenship questionnaire and an application for a passport, and transmitted those documents to the Embassy by a letter dated August 6, 1984. She had therefore been afforded an opportunity to submit evidence in her own behalf and had done so.

Mrs. R[redacted] apparently returned to Argentina before January 31, 1985 (that is, before the Department approved the certificate of loss of nationality), but there is no record that she returned to the Embassy to discuss her case.

> apparently had not visited Embassy, or sought to document herself as a U.S. citizen since DEC 1972. She did not renew her USPPT when it expired three years before she obtained her naturalization as an Argentine citizen. She sought no guidance on the possible repercussions of her naturalization action, and sought to procure a visa to enter the United States on an Argentine passport. Subject only came to the Embassy's citizenship counter when referred there by a Vice Consul interviewing her for a nonimmigrant visa. There is no evidence that the Subject looked for work in the private sector or outside her chosen field in 1980. Finally, we note that subject apparently considers herself as more than a perfunctory "economic" citizen of Argentina. In a 6 AUG 84 letter to the Embassy, the subject wrote that, "I feel a deep respect and loyalty for both the United States and Argentina and have been a good citizen in both countries, therefore I believe I am eligible for requesting a dual citizenship."
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> It is the opinion of the officer handling the case that the Subject lost her United States citizenship under Section 349(a)(1) of the Act by having obtained Argentine citizenship upon her own application. Her actions of commission and omission and the circumstances surrounding her case would appear to constitute highly persuasive evidence of an intent to relinquish her United States citizenship....

The Department concluded that Mrs. [redacted] actions, particularly her renunciatory oath of allegiance, manifested an intent to relinquish her United States citizenship. Accordingly, it approved the certificate of loss of nationality on January 31, 1985, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. The appeal was entered on April 11, 1985.

II

There is no dispute that Mrs. R[redacted] obtained naturalization in Argentina upon her own application, and so brought herself within the purview of section 349(a)(1) of the Immigration and Nationality Act. Performing a statutory expatriating act will not result in loss of nationality, however, unless it be proved that the act was voluntary and accompanied by an intention to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

With respect to the issue of voluntariness, the statute prescribes that performance of any one of the acts specified in section 349(a) of the Immigration and Nationality Act shall be presumed to be voluntary, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 6/ Appellant thus bears the burden of overcoming the presumption that she voluntarily became a citizen of Argentina.

She rests her contention that she acted involuntarily on allegations of economic duress which may be summarized as follows: When her husband lost his teaching position in 1978 and later that year became incapacitated by illness, she had to find employment to provide for her family. Although she was able

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6/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c), reads:

(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

to find employment with private clinics beginning in March 1979, she "could not continue working the lengthy hours required apart from being on call and receiving a very low remuneration". 7/ She wanted to get tne public health job because "I had some seniority, they offered better fringe benefits and salary and possibility for promotions." 8/ Furthermore, their children, then aged 21, 19 and 13, were all studying. So, she stated, "/a/t this point, the fight was to maintain the family, our home and the continued education of our children." 9/

It is settled that duress is an absolute defense to expatriation. Doreau v. Marshall, 170 F. 2d 721 (3rd Cir. 1948). Considering the inestimable worth of United States citizenship, the courts have insisted, not surprisingly, however, that a citizen who performs a statutory expatriating act and alleges that he was forced to do it, must prove he so acted because of the extraordinary circumstances in which he found himself. The rule was laid down in Doreau, supra.

> ...If by reason of extraordinary circumstances amounting to true duress, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is not authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. He cannot be truly said to be manifesting an intention of renouncing his country. On the other hand it is just as certain that the forsaking of American citizenship, even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress. 170 F. 2d at 724.

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7/ Appellant's affidavit of October 23, 1985.

8/ Appellant's affidavit of April 11, 1985.

9/ Appellant's affidavit of October 23, 1985.

Economic duress avoids the effect of expatriating conduct. Insogna v. Dulles, 116 F. Supp. 473 (D.D.C. 1953). In Insogna a dual citizen of Italy and the United States accepted employment in Italy in order, as the District Court held, "to subsist." Under such circumstances, the court held, the acceptance of employment "...was the result of actual duress which overcame her natural tendency to protect her birthright...Self-preservation has long been recognized as the first law of nature." 116 F. Supp. at 474 and 475.

In Stipa v. Dulles, 233 F. 2d 551 (3rd Cir. 1956) the petitioner testified that he faced dire economic plight and inability to find employment in the economic chaos of post-war Italy. The Circuit Court held that the District Court had erred in finding against petitioner and that he had indeed been subjected to economic duress.

Thirty years after Insogna and Stipa, the Ninth Circuit examined the issue of economic duress in Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985). Petitioner Richards argued that his naturalization in Canada was not voluntary because he was under economic duress when he obtained Canadian citizenship; he was teaching school when he decided to accept a job in the Boy Scouts, a position requiring Canadian citizenship. The Circuit Court agreed with Richards that an expatriating act performed under economic duress cannot be said to have been voluntary, citing Insogna and Stipa, supra. The court then said:

> ...Conditions of economic duress, however, have been found under circumstances far different from those prevailing here. In Insogna v. Dulles for instance, the expatriating act was performed to obtain money necessary 'in order to live.' 116 F. Supp. at 475. In Stipa v. Dulles, the alleged expatriate faced 'dire economic plight and inability to obtain employment.' 233 F. 2d at 556. Although we do not decide that economic duress exists only under such extreme circumstances, we do think that, at the least, some degree of hardship must be shown. The district court in this case found that Richards was under no hardship of any kind when he executed the documents containing the renunciation of United States citizenship.

Counsel for Mrs. R[redacted] argues that economic duress ought not be determined by the stringent standards established by the courts in cases arising out of World War II. Rather, the proper standards should be those that reflect the economic realities of

today's world. He thus seems to argue that a degree of economic distress or hardship, not a situation that threatens a party's survival or subsistence, should be sufficient to prove duress. We are unable to agree.

First, Richards should not, in our opinion, be read as setting a new, less rigorous standard for proof of economic duress. In deciding Richards the Ninth Circuit was required to determine only whether the district court erred in finding that Richards had not been subjected to any economic pressures when he obtained Canadian citizenship. There was no need for the Appeals Court to establish a standard against which to measure economic duress, and it simply concluded that the district court had not erred when he found there was no evidence Richards had been subject to coercion arising from his economic circumstances.

Second, Insogna and Stipa remain good law, as far as we are aware, and in the absence of cases that establish a less stringent standard, we must apply them to gauge whether a party has proved a defense of economic duress. It would be impermissible for the Board to apply standards different from those laid down in cases that are still valid.

Third, the theory that only some economic hardship need be shown is inconsistent with the proposition (enunciated clearly in Doreau, supra) that only the most exigent circumstances may excuse doing an act that compromises the priceless right of citizenship.

Measured against the standards of Insogna and Stipa Mrs. R[redacted] condition could hardly be described as extraordinary or unique. Even weighed against a less severe norm her situation does appear to us to have been such that her naturalization could be considered to have been coerced.

The devastating inflation in Argentina to which she refers affected all its citizens and residents, not appellant and her family demonstrably more acutely than others. The principal breadwinner in many other families undoubtedly lost his job as did appellant's husband. But here, appellant was fortunate in being able to find work in private clinics. She received renumeration; how much we do not know, nor are we told how far if at all her pay fell short of the needs of the family. Perhaps, as she states, the conditions under which she worked in private clinics were difficult, but she has not shown that she could not have negotiated better conditions or scaled back her hours and still brought home enough to keep the family afloat. Mrs. R[redacted] stated in the citizenship questionnaire she completed in August 1984 that she owned "properties" in Argentina. She has not demonstrated that she could not have borrowed against them (if she did not wish to sell them) in order to supplement her income. As to the demands of the education of her three children, the eldest child went to the United States around the time Dr. R[redacted] was fired.

With respect to the other two children, Mrs. R[redacted] has not shown that they would have been forced to leave school had she not obtained naturalization to be able to re-enter the Public Health Service. 10/ Indeed, we do not see that the continuation of the education of the other two children has any relevance to the issue of voluntariness. Mrs. R[redacted] husband lost his job in September 1978. She did not start to work for Public Health until June 1981. She has not alleged that the children were unable to continue their education in that period of nearly three years. A nexus between her providing for the children's education and her naturalization is missing.

Involuntariness implies absence of choice, Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (5th Cir. 1971). On the facts presented, it seems to us Mrs. R[redacted] had a choice and exercised it. During the two years immediately preceding her naturalization she worked in private clinics but decided that "I wanted to get the public health job because I had some senority, they offered better fringe benefits and salary and possibilities for promotions."

Not having proved that she and her family could not subsist on her earnings at the private clinics and on family savings, Mrs. R[redacted] may not be heard to contend that she was forced to take a position that entailed jeopardizing her United States citizenship. Her own words make clear that she elected to take the public health job because it was more appealing and renumerative. As a matter of law, this is not coercion.

In sum, while appellant's economic circumstances may have been shaky, they fall far short of economic duress. We therefore conclude that she has failed to rebut the statutory presumption that she obtained naturalization in Argentina voluntarily.

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10/ In her affidavit of October 23, 1985, she seems to suggest that the children would have had to leave school. "Young people in Argentina are not able to obtain positions or scholarships to study as easily as they can in the United States." She did not, however, take the matter any further.

III

Even though we have concluded that Mrs. R[redacted] naturalization was voluntary, it remains for us to determine whether the Department has borne its burden of proving that her naturalization was accompanied by an intention to relinquish her United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980). The statute, 11/ the Supreme Court said in Terrazas, requires that the Government prove a person's intent to relinquish citizenship by a preponderance of the evidence. 444 U.S. at 267. Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260. The intent the government must prove is the party's intent at the time the expatriating act was done. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

Performing a statutory expatriating act may be highly persuasive evidence of intent but it is not conclusive evidence thereof, and it is impermissible to presume from performance of the act that the citizen intended to relinquish citizenship. Vance v. Terrazas, 444 U.S. at 268. Thus, although appellant's actions in obtaining Argentine citizenship may strongly evidence an intent to abandon United States citizenship, something more must be proved to sustain the Department's determination that appellant intended to expatriate herself.

Terrazas v. Haig, supra, Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985) and Meretsky v. Department of State, et al., Civil Action 85-1985, memorandum opinion (D.C.C. 1985) applied the general principles laid down by the Supreme Court in Vance v. Terrazas.

In Terrazas v. Haig, plaintiff made an oath of allegiance to Mexico, simultaneously renouncing his United States citizenship and all fidelity to the United States. The Seventh Circuit agreed with the district court that the plaintiff intended to renounce his United States citizenship when he willingly, knowingly, and voluntarily obtained a certificate of Mexican nationality. Plaintiff, the Court noted, was of age, well-educated and fluent in Spanish at the time he executed the document which contained an oath of allegiance and the renunciation of United States nationality. He subsequently informed his draft board that he was no longer a United States citizen. Finally, plaintiff executed an affidavit in which he swore that he had taken an oath of allegiance to Mexico and had done so freely and with the intention of relinquishing United States citizenship. "We cannot conclude," the court said, "that the district court improperly

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11/ Section 349(c) of the Immigration and Nationality Act. Text, supra, note 6.

found that the government had established by a preponderance of the evidence that plaintiff intended to relinquish his United States citizenship." 653 F. 2d at 289.

Plaintiff in Richards v. Secretary of State, a native-born United States citizen, became a legal resident of Canada in 1965. In 1971, in order to meet the citizenship requirements for employment by the Boy Scouts of Canada, he obtained naturalization. Like appellant in the case at bar, Richards swore an oath of allegiance to the British Crown and expressly renounced "all other allegiance and fidelity." He returned to the United States in 1971 with a Canadian passport for graduate study, registering as a foreign student. In 1973 he returned to Canada to teach, and later did free-lance work. He received a new Canadian passport and used it to travel abroad.

After his naturalization had come to the attention of the United States authorities, Richards stated in a form he completed to determine his citizenship status that: "I did not want to relinquish my U.S. citizenship but as part of the Canadian citizenship requirement I did so."

The Ninth Circuit agreed with the district court that Richards knew and understood the meaning of the words in the renunciatory declaration, and said that: "the voluntary taking of a formal oath of allegiance that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." 752 F. 2d at 1421. It found no factors that would justify a different conclusion. Id.

In Meretsky plaintiff applied for naturalization in Canada in order to qualify to be called to the Bar. Like the plaintiff in Richards, Meretsky swore a renunciatory oath of allegiance. The court found that plaintiff's intent to relinquish his United States citizenship was expressed in the words of the oath he executed upon becoming a Canadian citizen. The court continued:

> When plaintiff took the oath he was a citizen only of the United States and thus it is clear that he could only have renounced that citizenship. Plaintiff does not contend that he did not understand the words of the Canadian Oath of Allegiance. The Court, therefore, concludes that plaintiff's intent to relinquish his United States citizenship was established by his knowing and voluntary taking of an oath of allegiance to a foreign sovereign which included an

> explicit renunciation of his United States citizenship. See Richards v. Secretary of State, 752 F. 2d 1413, 1421 (9th Cir. 1985).

In sum, the voluntary, knowing and intelligent taking of an oath of allegiance to a foreign state that includes a renunciation of United States nationality is usually sufficient to establish an intent to relinquish United States citizenship unless other factors are present that are sufficiently probative of a contrary intent to negate the import of the affirmation of allegiance to a foreign state.

Applying the above-cited criteria to the case before us, it is apparent that Mrs. R[redacted] manifested an intent to relinquish her United States nationality when she swore a renunciatory oath of allegiance to Argentina. On the facts, we believe she acted knowingly and intelligently in making the oath of allegiance. She was 52 years of age at the time and obviously conversant with Spanish; she had lived in Argentina for over twenty years. The renunciatory language of the oath as attested by the official who presided at her naturalization is unambiguous. We therefore do not understand appellant's contention that she saw nothing inconsistent between swearing the oath she swore and retention of her United States nationality. The transfer of allegiance inherent in the oath is too obvious to warrant further discussion.

Mrs. R[redacted] maintains, however, that she did not intend to relinquish her United States citizenship when she became an Argentine citizen; her only intention was to be able to work in her profession for economic reasons. The cases hold, however, that motivation is irrelevant to the issue of intent if one manifests an intention to relinquish United States citizenship by taking an oath such as Mrs. R[redacted] took. See Richards, supra, where the Ninth Circuit rejected petitioner's argument that his particular motivation negated his intent to relinquish his citizenship. In Richards the court found that an effective renunciation of citizenship is not limited to cases in which a plaintiff's "will" to renounce his citizenship "is based on a principled, abstract desire to sever allegiance to the United States." 752 F. 2d at 1421. The court stated:

> /It is/ abundantly clear that a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, /or/ to advance a career . . . a United States citizen's free choice to renounce his citizenship results in loss of that citizenship. Id.

Similarly, Meretsky v. Department of State, supra.

Appellant argues that her lack of intent to relinquish her United States citizenship is demonstrated by her belief that she might legally retain United States citizenship after acquiring that of Argentina. She explained as follows why she believed her position to be sound:

> In reading the warnings in my american passport I understood that I was entitled to a dual citizenship because of marriage. It was not my intention at all to relinquish my american citizenship. In the passport it also stated that you may lose your nationality under certain circumstances but it does not say you will. As to the paragraph on dual nationals, it states that "a person is considered a dual national when he owes allegiance to more than one country at the same time", and it follows "aclaim /sic/ to allegiance may be based on facts of birth, marriage, parentage or naturalization". 12/

Furthermore, she stated:

> The fact that our two elder children opted to maintain their United States citizenship while living in Argentina and that our Argentine born son is registered as a North American since 1967 (having a dual citizenship), demonstrates the influence their parents have had on them. This also demonstrates my fixed will and intent to keep our children and my own citizenship. 13/

While we are of the view that the "warnings" in the United States passport are not worded as felicitously as they might be, those warnings nonetheless put the holder of the passport on notice that there may be legal consequences to performing an expatriative act. This Mrs. R[redacted] concedes, yet she proceeded to seek and obtain naturalization in a foreign state without first consulting United States officials, or, it would appear, even competent legal counsel. That appellant and her

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12/ Affidavit of April 11, 1985.

13/ Affidavit of October 23, 1985.

husband may have encouraged their two eldest children to take steps while in Argentina to preserve their United States citizenship seems of marginal relevance to the issue of appellant's intent, especially when one notes that from **1977,** when *Mrs.* R[redacted] United States passport expired, until **1984** she took **no** recorded measures to document herself **as** a United States citizen, or otherwise demonstrate that she considered herself a United States citizen.

Surveying the entire record presented to us, we do not notice any clear words or actions at the time of or after her naturalization that would indicate that she intended to retain her United States citizenship. Not only did she, in our opinion, voluntarily, knowingly and intelligently subscribe to an oath of allegiance renouncing all allegiance to the United States, but also she obtained an Argentine passport in May **1984** expressly for the purpose of visiting the United States. **14/** She thus indicated that she proposed to travel to her native country as an alien. Since she applied for an Argentine passport to visit the United States in May **1984,** we find it difficult to accept appellant's assertion that when she visited the United States Embassy in July **1984** she did not, as the Embassy reported, ask for **a** United **States visa** in **her Argentine passport.**

Appellant declares that she never intended to relinquish her United States citizenship. However sincere she may be, that assertion is contradicted by appellant's words and proven conduct which after all are in the eyes of the law the only valid criteria for gauging a person's intent.

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**14/** On September **6, 1984** the Ministry of Foreign Affairs responded to an inquiry of the United States Embassy dated July **30, 1984,** about the issuance of an Argentine passport to appellant. The Ministry enclosed in a diplomatic note a report from the Federal Police, stating that:

> **...**on May **17, 1984,** she /Mrs. R[redacted]a/ took the necessary steps to obtain a passport to travel to the United States and, at that time, provided proof that she was a naturalized Argentine citizen by means of /her/ National Identity Card.. **..**

On all the evidence, we believe the Department has carried its statutory burden of proving by a preponderance of the evidence that Mrs. R[redacted] intended to relinquish her United States citizenship when she obtained naturalization in Argentina upon her own application.

IV

Upon consideration of the foregoing, the Board hereby affirms the Department's administrative determination of January 31, 1985.

Alan G. James, Chairman

G. Jonathan Greenwald, Member

George Taft, Member